Supreme Court, U.S.
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No. 06-

IN THE

Supreme Court of the United States

ARIEL PEREZ, SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ARIEL E. PEREZ, JR.,

Petitioner,

v.

OAKLAND COUNTY; OAKLAND COUNTY SHERIFF; MICHAEL J. BOUCHARD, Oakland County Sheriff; JOHN DOE, Unknown Oakland County Sheriff's Department Deputies; ROBERTA RICE; MICHAEL MONROE, TERRY MONTGOMERY, and JOHN JORGANSON, Deputies; and SARATH HEMACHANDRA, Dr.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The civil rights act at 42 U.S.C. § 1983 provides a remedy for constitutionally proscribed conduct. The Eighth Amendment prohibits cruel and unusual conduct. This prohibition extends to the treatment and care of jail inmates, including the care and treatment of seriously mentally ill inmates with known suicidal tendencies. More than 25 years before this case, it was held that deliberate indifference to the serious medical needs of a prisoner is a violation of the Eighth Amendment to the United States Constitution. It has been well known for many years that this Constitutional protection extends to psychiatric care and treatment, and that it extends to inmates with known suicidal tendencies. A jail inmate has a Constitutional right to be protected from known self-destructive tendencies, including suicide. It has been held long before 2002 that jail officials will be liable for an inmate's suicide if they were deliberately indifferent to a substantial suicide risk. When there is a substantial risk that an inmate may commit suicide, the jail official must implement adequate protections for the safety of the inmate. Obviously, it should go without saying that the Constitution proscribes conduct that exacerbates the inmate's psychiatric condition and the likelihood that the inmate will commit suicide.

In light of the foregoing, the following questions are presented in this case:

Whether it was clearly established in 2002 that a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies had a constitutional right to adequate protections and safeguards to prevent him from harm.

Whether it was clearly established in 2002 that a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies had a constitutional right to a reasonable protection against taking his own life if he demonstrated a strong likelihood that he would commit suicide.

Whether it was clearly established in 2002 that a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies had a constitutional right not to have a jail official be deliberately indifferent to his serious medical needs.

Whether it was clearly established in 2002 that a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies had a constitutional right not to have a jail official exacerbate his condition and increase the likelihood that he would inflict harm upon himself.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The district court's opinion (per Rosen, D.J.) granting respondent's summary judgment motion (Appendix ("Pet. App.") 45a-88a) is published at 380 F. Supp. 2d 830 (2005). The court of appeals' opinion (per Cudahy, C.J., joined by Griffin concurring in result and in all portions of the majority opinion except Section II.A.1. Moore, C.J. delivered a separate opinion concurring in part and dissenting in part.) affirming (Pet. App. 1a-44a) is published at 466 F.3d 416 (6th Cir. 2006). The court of appeals' order denying rehearing and rehearing en banc (*id.* 89a-90a) is not otherwise published.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on October 18, 2006, and denied rehearing and rehearing en banc on March 14, 2007. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution provides that:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The provision of 42 U.S.C. § 1983, relevant to this petition is as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF CASE

This is a jail suicide case involving a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies who was incarcerated in 2002 in the Oakland County Jail for a low-level probation violation following an equally low-level crime. Despite the fact that the inmate was, among other things, a paranoid schizophrenic with a history of hearing voices to harm himself and with a longstanding well documented history of suicide watches and suicide attempts in the Oakland County Jail, the inmate was isolated in a 5' x 8' foot single cell without any safety precautions whatsoever, or any monitoring, or any close observation, or any special watches. Additionally, while housed in the single cell, the inmate was not receiving any mental health treatment whatsoever. The inmate's fate was entirely predictable.

With the closing of many state mental health facilities, the brutal reality is that many mentally ill people are finding

themselves in the county jails for low-level offenses that are most often related to the mental illness of these individuals. However, in the 21st Century, this is not an unknown or unpredictable situation for the jails. Jail Officials have long been aware that they must provide adequate care and treatment for these individuals and they cannot disregard an excessive risk to an inmate's safety. Although not ideal, most large jails now have mental health procedures in place for handling mentally ill inmates. The jails have psychiatrists and other mental health personnel who provide services for mentally ill inmates. This is also in large part due to the fact that it has been long established that our Constitution provides that jails must provide adequate medical care to seriously mentally ill inmates and must provide adequate safeguards and protections for inmates who pose a substantial risk of harming themselves.

Everyone acknowledges that this is a tragic case. In fact, the circuit court commenced its opinion with an acknowledgment that "this is a tragic case". This case asserts claims under 42 U.S.C § 1983 for violations of a jail inmate's Eighth Amendment right to be free from cruel and unusual punishment. This pronouncement by the circuit court is exceedingly apropos in light of the fact that this case has continued to become more tragic. The tragedy has been compounded in that the Petitioner has not been able to get his day in the trial court, despite the fact that three out of the four United States Judges who have opined in this matter have concluded that a constitutional violation may have occurred. Notwithstanding that there is sufficient evidence that the jail official was deliberately indifferent to the serious medical needs of the Petitioner, the aggrieved family has not been afforded the opportunity to have their claims heard by a jury. Notwithstanding that there is sufficient evidence that the

jail official knew of and disregarded a substantial risk that the inmate would harm himself, and that said jail official failed to take any reasonable steps whatsoever to prevent the inmate from harming himself, the aggrieved family has not been afforded the opportunity to have their claims heard by a jury. This seems unfathomable in the 21st Century, but tragically it has been, in fact, the case.

The reason that Petitioner has not been afforded the opportunity to continue has not been the lack of a viable constitutional violation. The sole reason that Petitioner has not been afforded his day in court is that the courts have dismissed the jail official based on qualified immunity. More particularly, the courts have held that it is the "clearly established right" prong of the qualified immunity test that the Petitioner has failed to show.

The facts relevant to this case are largely undisputed. The decedent, Ariel Perez, Jr. ("Perez"), was a 19 year old of Puerto Rican descent. Perez had a history of mental illness and had been diagnosed by many psychiatrists as a paranoid schizophrenic with auditory hallucinations. Perez was also learning disabled and had been diagnosed as a child with ADHD. The incidents in this case occurred at the Oakland County Jail in Pontiac, Michigan ("OCJ"). Perez's serious mental illness was well known and well documented in and by the OCJ. OCJ psychiatrist, Dr. Sarath Hemachandra ("Dr. Hemachandra") had diagnosed Perez on more than one occasion with schizoaffective disorder, intermittent explosive disorder, and personality disorder. Perez's major mental illness and jail history were also well known by Respondent, Roberta Rice ("Rice"). Rice is an inmate caseworker at the OCJ. Although she had no medical, nursing, or counseling degree or training, Rice was commonly referred to at the OCJ

as a "counselor". Rice's job responsibilities, as a jail inmate caseworker include, carrying out the treatment plan identified by the jail psychiatrist. Rice was personally involved with Perez, and involved in the care and treatment of Perez at the OCJ during 2001 and 2002. Furthermore, Perez had a well known and well documented history of suicide attempts, suicide watches, behavior watches, suicide statements, and other problems at the OCJ. Rice was intimately aware of this history.

Perez was accused of stealing a used punching bag and an $8.00 AT&T calling card from his friend's house. The prosecution valued the total at $108.00. On the advice of counsel, Perez pled guilty to two felonies. Despite the fact that the family advised the court of Perez's mental health condition, Perez was sentenced to boot camp. Due to difficulties adjusting, after only one week he was transferred to the main OCJ where he served six months in jail. During this time, Perez was placed on several suicide watches, behavioral watches, and had several other problems associated with his mental illness such as minor rule violations. Dr. Hemachandra and Rice were aware of Perez's mental illness and his problems during this time in the OCJ. After service six months, Perez was released and then placed on probation.

On October 24, 2002, Perez was booked into the OCJ for a probation violation. At the time of booking, Rice was aware that Perez: was learning disabled; had a history of serious mental illness; had been diagnosed with schizoaffective disorder; had been admitted to a hospital for psychiatric care; and had a serious medical need. Only one day later, Perez attempted suicide by hanging himself with his pants. A sheriff's deputy placed Perez on a suicide watch.

Dr. Hemachandra evaluated Perez. Dr. Hemachandra wrote a prescription for lithium and zyprexa and recommended that they keep Perez under close observation.

At all times relevant herein, Perez had a known and well documented serious medical need and had known and well documented suicidal tendencies. Perez had been placed on active suicide watches on several prior occasions while in the OCJ, had made suicide statements while in OCJ, and had previously attempted suicide in the OCJ. At all times relevant herein, the OCJ computer system reflected a special care code for Perez of "SPCARE: PSU", which indicates that the inmate (Perez) is historically potentially suicidal.

On October 28, 2002, only three days after Dr. Hemachandra ordered Perez to be kept under close observation, Rice removed Perez from active suicide watch ("ASW"). Perez was moved to a ten man cell where he remained until November 18, 2002. Despite Dr. Hemachandra's order, Rice did not place Perez on any special watch or under close observation. When Perez was removed from ASW, Perez's jail file was further updated by Rice to indicate a special care code "SPCARE: PSU", which indicates that the inmate is historically potentially suicidal. On November 4, 2002, Rice met with Perez because he was refusing his psychiatric medication. On November 8, 2002, Dr. Hemachandra met with, evaluated, and diagnosed Perez. Dr. Hemachandra's diagnosis was again that Perez had major mental disorders (schizoaffective disorder, intermittent explosive disorder, and personality disorder), and he recommended treatment of psychiatric medication of Lithium carbonate and Zyprexa, individual counseling and substance abuse counseling. Perez never received any individual

counseling or substance abuse counseling as ordered by Dr. Hemachandra.

On November 18, 2002, a sheriff's deputy requested that Rice clear Perez for single cell housing because it had been alleged that Perez was stealing from other inmates. At this time, the jail records reflect that Perez was non-compliant with his psychiatric medication. Rice briefly met with Perez and, despite these facts evidencing the continued instability of this seriously mentally ill inmate, did, in fact, clear Perez for single cell housing in a 5' x 8' cell without any special watch, without any monitoring or close observation, and without any safety precautions whatsoever. Moreover, Rice did not consult jail psychiatrist Dr. Hemachandra prior to making this decision to move Perez to the single cell, nor did she consult him about the move at any time thereafter. Rice totally disregarded Perez's serious mental illness and disregarded his history and known suicidal tendencies when she cleared him for single cell housing. When Perez was placed in the 5' x 8' single cell, and at all times thereafter, no close observation or other monitoring was implemented by Rice or existed. No suicide or other safety precautions were implemented by Rice or in place. In the single cell, Perez was isolated for most of the day. While in the single cell housing, Perez received no mental health treatment, and no safety measures were implemented. Despite the foregoing, Rice continued Perez's special care code "SPCARE: PSU", which indicated that Perez was historically potentially suicidal. Perez was still identified by Rice as being historically potentially suicidal, and thus a strong suicide risk.

On November 22, 2002, as was the case at all times while Perez was housed in the single cell, no special watches of any kind existed. No closed circuit, television, or other close

observation of Perez existed. On this day, Perez attempted suicide by hanging. Perez hung himself with a bed sheet tied to a vent, resulting in Perez being on life support. Perez died three days later.

This case was originally filed in the district court. The basis for jurisdiction was a claimed violation of the Eighth Amendment of the United States Constitution through 42 U.S.C. § 1983. Petitioner alleged that the jail employee, Respondent Rice, violated Perez's Eighth Amendment right to be free from cruel and unusual punishment.

As to Rice, the district court held that there is sufficient evidence to show that Rice violated Perez's Eighth Amendment right to be free from cruel and unusual punishment. The district court held that there is sufficient evidence of deliberate indifference by Rice to Perez's serious medical needs to go to the jury, but held that Rice was entitled to qualified immunity. Based solely on qualified immunity, the district court dismissed the federal claims against Rice.

The court of appeals was a divided decision. As to the issues of deliberate indifference by Rice, two of the panel's Judges (Judge Cudahy and Judge Moore concurring) agreed with the district court that there is sufficient evidence of deliberate indifference by Rice. However, as to the issue of qualified immunity, two of the panel's Judges (Judge Cudahy and Judge Griffin concurring in result) held that Rice is entitled to qualified immunity based solely on the determination that the asserted "right" at issue was not clearly established at the time of the events. Judge Moore dissented on the issue of qualified immunity. Judge Moore believes that a different right is clearly applicable and that said constitutional right was clearly established well before the

events in question and that Rice should not be granted qualified immunity.

Thus, the relevant and critical issue that both the district court and the court of appeals wrestled with was whether the rights at issue in this case were clearly established in late 2002.

REASONS FOR GRANTING THE PETITION

42 U.S.C. § 1983 prohibits any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State" from depriving any U.S. citizen "of any rights, privileges, or immunities secured by the constitution and laws". The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment. U.S. Const. amend VIII. Petitioner claims that Respondent Rice violated Perez's Eighth Amendment right to be free from cruel and unusual punishment by being deliberately indifferent to Perez's serious medical condition.

The case turns on qualified immunity. The U.S. Supreme Court set forth a two-part test in *Saucier v. Katz*, 533 U.S. 194, 150 L. Ed. 2d 272, 121 S. Ct. 2151 (2001) for determining if an official is entitled to qualified immunity. First, there is a threshold question: Taken in the light most favorable to the Plaintiff, do the facts alleged show the officer's (Defendant's) conduct violated a constitutional right? If the facts would establish a violation, then: Whether the right was clearly established? A clearly established right is one "that a reasonable official would understand that what he is doing violates that right". *Id.* at 202.

In this case, the district court and the circuit court held that Petitioner met the first prong of the qualified immunity analysis. Both courts found for Petitioner that there is sufficient evidence that Rice's conduct violated Perez's constitutional rights. However, after finding that the facts are sufficient to establish a constitutional violation, both court's totally missed the point on the "clearly established right" analysis. The courts below wrongfully held that the rights at issue were not clearly established in 2002 such that a reasonable official would understand that what she was doing violated these rights. It is unbelievable that, although Petitioner has met his burden with respect to a prima facie showing that a constitutional violation occurred in this case, the lower courts believe that Petitioner has not shown that, in 2002, the rights at issue were clearly established.

The Sixth Circuit's decision conflicts with holdings of this Court and of other circuits. In the 21st Century under the United States Constitution and our jurisprudence, such an outcome is actually outrageous. Furthermore, in addition to the importance of this matter to Petitioner, in light of the significant number of mentally ill inmates that continue to make it into the county jail systems, this case presents an important societal issue.

The petition should be granted for the following reasons:

I. Certiorari Is Warranted Because The Decision Below Conflicts With Decisions Of This Court And Of Other Circuits.

A. The Decision Below Conflicts With Long Standing Well Established Decisions Of This Court

There is no question that the rights at issue in this case were clearly established in 2002. The courts below imposed an unobtainable illusory standard and burden upon the Petitioner for showing that the rights at issue were clearly established in 2002. On the one hand, the courts below acknowledged that the Petitioner does not have to cite precedent that is the exact same fact pattern as the present case or even substantially similar facts to show that the rights at issue were clearly established. But, on the other hand and notwithstanding the foregoing, the courts below held that Petitioner had not cited precedent that was factually narrow enough to identify the rights at issue were clearly established. Moreover, the circuit court even went so far as to wrongfully identify the right at issue in this case. The circuit court identified the right at issue as a right to be correctly assessed or screened for suicide. The right at issue in this case is not, as the circuit court opined, the right to be assessed or screened correctly for one's propensity to commit suicide. This totally mischaracterized the rights at issue in this case. Petitioner never argued that this is a screening case. Perez had already been correctly identified as suicidal at the OCJ and at all times the OCJ computer reflected that Perez was historically potentially suicidal. In fact, Perez had previously attempted suicide at the OCJ, had previously made suicide statements

at the OCJ, and had previously been on active suicide watches at the OCJ. Everyone already knew at all times that Perez was seriously mentally ill and that he had a history of suicide watches, statements, and attempts. Everyone already knew he had suicidal tendencies. The right at issue is the right to adequate medical attention once the inmate's suicidal tendencies are known. This right includes the adequate safety precautions. No precautions whatsoever were in place for Perez.

There are three main U.S. Supreme Court cases that the decision below conflicts with.

First, the decision below conflicts with the United States Supreme Court decision in *Anderson v. Creighton*, 483 U.S. 635, 107 S.Ct. 3034, 3038 (1987) on the application of qualified immunity. With respect to how particularized the "clearly established" right must be, the Supreme Court stated that

> the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. That is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, . . . but it is to say that in light of pre-existing law the unlawfulness must be apparent.

Id. at 640.

The Supreme Court held that the conduct in question does not have to be the very same conduct that has previously been held unlawful to be clearly established, yet that is the

standard that was applied to Petitioner. The jail official only need "fair warning" that her actions were unconstitutional. *Hope v. Pelzer*, 536 U.S. 259, 271, 117 S.Ct. 1219, 137 L. Ed.2d 432 (1997). Certainly, in 2002, a reasonable jail official in Rice's position had "fair warning" that disregarding the known suicidal history of Perez, a paranoid schizophrenic jail inmate with a history of auditory hallucinations, by placing him in a isolation in a 5' x 8' single cell with out any safety precautions or monitoring whatsoever in place and also by providing him the means to carry out his suicide, would be a constitutional violation.

Second, the decision below directly conflicts with *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). It is well settled that deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. *Id.* at 290. *Estelle* was decided in 1976, approximately 26 years before this case. It cannot be reasonably or logically argued that Perez's constitutional rights at issue in this case were not clearly established in 2002. The rights had long been clearly established by 2002. Petitioner contends that, first and foremost, the basic right at issue in this case is the right of Perez not to have his serious medical needs dealt with in a deliberately indifferent manner.

Third, the decision below conflicts with *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed. 811 (1994), where the Supreme Court held that an Eighth Amendment violation occurs if a prison official knows of and disregards an excessive risk to the inmate's health or safety. "[A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm would befall an inmate; it is enough that the official acted or failed to act

despite his knowledge of a substantial risk of serious harm." *Id.* at 842. Further,

> [w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.

Id. Again, it cannot be reasonably or logically argued that Perez's constitutional rights at issue in this case were not clearly established in 2002. The rights had long been clearly established by 2002. Perez had a right not to have Rice disregard his known substantial risk of suicide and not to have Rice fail to take reasonable and adequate precautions to insure his safety. Rice was aware of an excessive risk of harm to Perez's safety, but she disregarded that excessive risk and failed to act in a reasonable manner. In fact, Rice exacerbated the problem by isolating a Perez in a small single cell when she knew he was seriously mentally ill, not being medicated, not receiving counseling, having problems with other inmates, had suicidal tendencies, and was not being monitored. There is no doubt that Perez's condition deteriorated in the single cell until his suicide attempt.

B. The Decision Below Conflicts With Long Standing Well Established Decisions Of Other Circuits

It has long been held in the other Circuits, and thus clearly established in 2002, that failure to take adequate precautions to known suicidal tendencies amounts to

deliberate indifference to the inmate's serious medical needs. *See, e.g. Edwards v. Gilbert,* 867 F. 2d 1271 (11th Cir. 1989); *Popham v. City of Talladega,* 908 F. 2d 1561 (11th Cir. 1990); *Elliott v. Cheshire County, N. H.,* 940 F. 2d 7 (1st Cir. 1991); *Belcher v. Oliver,* 898 F. 2d 32 (4th Cir. 1990); Estate of Cartwright v. City of Concord, 856 F. 2d 1437 (9th Cir. 1988); *State Bank of St. Charles v. Camic,* 712 F. 2d 1140 (7th Cir.) *cert. denied,* 464 U.S. 995, 78 L. Ed. 2d 686, 104 S. Ct. 491 (1983).

See also Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992) where the court held that it was clearly established in 1986 that police officers could not be deliberately indifferent to a detainee who or who is a substantial suicide risk. *Id.* at 404-405. The *Hall* court cited and based its opinion on *Estelle v. Gamble, supra.* Most interesting about the *Hall* decision, is that Circuit Judge Cudahy was one of the circuit judges who issued the *Hall* decision. Circuit Judge Cudahy is also the very same judge who authored the circuit decision below in this case.

> Applying the wilfull neglect standard to cases involving prisoners in need of psychological care was deemed clearly established, not simply because of a right to medical care but also because of the principal that prison officials are not entitled to an objective good faith defense . . . if they are aware of a risk of injury to an inmate and nevertheless fail to take appropriate steps to protect the inmate from that known danger.

Hall, 957 F.2d at 405, quoting *Joseph v. Brierton,* 739 F.2d 1244, 1250 (7th Cir. 1984). "A plaintiff with known suicidal tendencies obviously falls within this rule." *Hall,* 957 F. 2d

at 405. *Hall* held that it was clearly established in 1986 (16 years before the facts in this case) that police officers could not be deliberately indifferent to a detainee who is in need of medical attention because of a mental illness or who is a substantial suicide risk Deliberate indifference to a prisoner's medical needs constitutes cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 404-405. *Hall, supra,* was decided 10 years before the facts of this case.

Another Seventh Circuit case that this case conflicts with and which provided adequate notice and fair warning to Rice that her actions were unconstitutional is *Sanville v. Schroeder*, 266 F.3d 724 (7th Cir. 2001). The court held that prisoners have a constitutional right to be protected from self-destructive tendencies, including suicide. The court, quoting *Hall, supra,* stated that "there can be little debate that it was clearly established, long before 1998, 'that prison officials will be liable for a pretrial detainee's suicide if they were deliberately indifferent to a substantial suicide risk'". Sanville, 266 F.3d at 740 *quoting Hall*, 957 F.2d at 406.

The circuit court's decision on the clearly established right issue in this case cannot be reconciled with the decision in *Hall* or *Sanville,* or the plethora of decisions with similar holdings. As stated, it has long been established that jail officials must take appropriate steps to protect an inmate with known suicidal tendencies from that known danger. The circuit court just blew it and the Perez family has been the victim again of yet another injustice. In support, *see also, Colburn v. Upper Darby Township*, 838 F.2d 663, 669 (3rd Cir. 1988), *cert. denied* 489 U.S 1065, 103 L.Ed.2d 808, 109 S.Ct. 1338; *Belcher v. Oliver*, 898 F.2d 32, 34-35 (4th Cir. 1990); *Partridge v. Two Unknown Police Officers of Houston*,

791 F. 2d 1182, 1187 (5th Cir. 1986); *Cabrales v. County of Los Angeles*, 864 F. 2d 1454 (9th Cir. 1988), *vacated*, 490 U.S. 1087, 109 S.Ct. 2425, 104 L.Ed.2d 982, *reinstated* 886 F.2d 235, *cert. denied*, 494 U.S. 1091, 110 S.Ct. 1838, 108 L.Ed.2d 966.

The cases ultimately flow back to *Estelle v. Gamble*, *supra*, a 1976 U.S. Supreme Court case. The foregoing are but a few of the many cases in other circuits that support Petitioner's claim that the rights in this case were clearly established before 2002. This does not even include the many sixth circuit cases that this case conflicts with.

Based on the foregoing, it was clearly established in 2002 that, Perez, a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies, had a constitutional right to adequate protections and safeguards to prevent him from harm. It was clearly established in 2002 that, Perez, a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies, had a constitutional right to a reasonable protection against taking his own life if he demonstrated a strong likelihood that he would commit suicide. It was clearly established in 2002 that, Perez, a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies, had a constitutional right not to have a jail official be deliberately indifferent to his serious medical needs. It was clearly established in 2002 that, Perez, a seriously mentally ill paranoid schizophrenic jail inmate with a history of auditory hallucinations and with well known suicidal tendencies, had a constitutional right not to have a jail official exacerbate his condition and increase the likelihood that he would inflict harm upon himself.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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